

PT 98-54
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

BVRH THERAPEUTIC)		
RIDING PROGRAM, INC.	)	Docket #	95-4-42
Applicant	)	Docket #	95-4-43
)		
v.	)	Parcel Index #	09-03-14-400-006
	)	Parcel Index #s	09-03-14-400-020
)		
	)	Barbara S. Rowe	
THE DEPARTMENT OF REVENUE	)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Pamela S. Fox, Maggio and Fox, P.C. for BVRH Therapeutic Riding Program, Inc.

Synopsis:

The hearing in this matter was held at on November 14, 1997, to determine whether or not Boone County Parcel Index Nos. 09-03-14-400-006 and 09-03-14-400-020 qualified for exemption during the 1995 assessment year.

Present and testifying on behalf of BVRH Therapeutic Riding Program, Inc. (hereinafter referred to as the "Applicant") were: Theresa Adams, co-founder; Sally Goddard, lawyer with a master's degree in taxation, member of the boards of directors, vice president and chairman of the grants committee, and volunteer; Debbie Matthews, mother of a student and volunteer; Linda Piccirilli, mother of a student and volunteer; Kathleen Buswell, occupational therapist, member

of the board and volunteer; and Kelly Walter, program director for the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels at issue during the 1995 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for charitable purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during the period of August 28, 1995 through the end of the 1995 assessment year. It is also determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the property, except for the residence of the caretaker, for charitable purposes during the period of August 28, 1995 through December 31, 1995.

Findings of Fact:

1. The jurisdiction and position of the Department that Boone County Parcel Index Nos. 09-03-14-400-006 and 09-03-14-400-020 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Department's Exhibit Nos. 1 through 7. (Tr. p. 12)

2. On March 15, 1996, the Department received a property tax exemption application from the Boone County Board of Review for Permanent Parcel Index Nos. 09-03-14-400-006 and 09-03-14-400-020. The applicant had submitted the request, and the board recommended denial of the requested exemptions for the 1995 assessment year. The Department assigned Docket Nos. 95-4-42 and 95-4-43 to the applications. (Dept. Grp. Ex. Nos. 2 & 3)

3. On September 6, 1996, the Department denied the requested exemption applications, finding that the properties were not in exempt use. (Dept. Ex. No. 5)

4. The applicant timely protested the denial of the exemptions and requested a hearing in the matter. (Dept. Ex. No. 6)

5. The hearing at the Department's offices in Chicago, Illinois, on November 14, 1997, was held pursuant to that request. (Dept. Ex. No. 7)

6. The applicant acquired the properties at issue by a warranty deed dated August 28, 1995. (Dept. Grp. Ex. Nos. 2 pp. 7-8 & 3 pp. 3-4)

7. Blackhawk Valley Riding for the Handicapped was incorporated under the general not for profit corporation act on March 7, 1983. The name was subsequently changed to B.V.R.H. Therapeutic Riding Program, Inc., the applicant, on May 10, 1995. (Dept. Grp. Ex. No. 4)

8. The articles of amendment to applicant's articles of incorporation, filed with the Illinois Secretary of State on July 20, 1984, state:

The object of this corporation is to provide therapeutic horseback riding lessons for handicapped persons. The corporation is organized exclusively for charitable, educational, and scientific purposes[,] including for such purposes the making of distributions to organizations that qualify as exempt organizations under 501(c)(3) of the Internal Revenue Code of 1954, (or the corresponding provision of any further United States Internal Revenue Code.) (Dept. Ex. No. 4 p. 15)

9. The parcels in question compromise a 17.97-acre parcel of land located at 4950 Route 173, Poplar Grove, Illinois. Parcel Index No. 09-03-14-400-006, otherwise known as the "Riding Stable", is comprised of 4.48 acres. Parcel Index No. 09-03-14-400-020, located adjacent to the riding stable, is comprised of 13.39 acres and is referred to as the "Farm Land." (Dept. Ex. No. 2 p. 13)

10. The riding stable consists of five buildings. Building No. 1 is a 1,736 one-story ranch style home with basement. The application stated that the home will be used on a year round basis to house the resident barn manager, rent free. The resident barn manager will be responsible, on a full-time basis, for taking care of, feeding and grooming the 20-plus horses used in the BVRH therapeutic riding program. (Dept. Ex. No. 2 p. 12)

11. Building No. 2 on the 4.58 parcel is a 600 square foot lean-to used to board up to six (6) horses that the applicant uses in its program. (Dept. Ex. No. 2 p. 12)

12. Building No. 3 on the 4.58 parcel is a 1,920 square foot pole barn used to store hay, equipment and supplies, and to board up to eight (8) horses used in applicant's program. (Dept. Ex. No. 2 p. 12)

13. Building No. 4 on the 4.58 parcel is an 11,769 square foot Butler building used to provide horseback riding lessons to the students. The building is used to train horses and volunteers in the therapeutic riding context; to hold clinics, seminars, and other training sessions

for the members of the applicant and the community; to host horse shows, riding demonstrations, and open houses to showcase and support applicant's program; and to host 4-H, pony club, and/or special Olympic programs for the students and members of the applicant. (Dept. Ex. No. 2 p. 12)

14. Building No. 5 on the 4.58 parcel is a 3,456 square foot Butler stable that is used to board up to twelve (12) horses in applicant's program and to house the tack for the horses used in applicant's program. (Dept. Ex. No. 2 p. 12)

15. The 13.39 acres, known as the farmland contains no buildings or structures. Seven acres of the land is used for grazing for horses utilized in applicant's programs. Six acres are used for trail riding in applicant's program. (Dept. Ex. No. 2 p. 16)

16. Applicant began its program in 1983. A survey was done with the help of United Cerebral Palsy to see if there was a local need. Once the need was identified, the applicant approached the Rockford Park District who agreed to let the applicant use their pasture area and trail horses at no charge. The applicant trained the horses to be used to wheel chairs, crutches, and mounting ramps. The park district was able to get the applicant a grant to build an outdoor arena. (Tr. pp. 16-19)

17. The applicant's therapeutic program began with 20 students one day a week. Due to the fact that the training could only be done in the outdoors, the program would begin in July and be completed in September on Monday mornings. The program lasted in this fashion until 1995 when the subject parcel was purchased. (Tr. p. 16-17)

18. The physical benefits of riding for disabled persons include reduced spasticity, improved respiration, circulation, balance, and body metabolism, along with greater muscle strength and agility, increased strength and range of motion of the legs, and an increased ability to ambulate or walk. For the upper body, there is increased muscle control, balance, and scapular stability which increases the ability to use the arms. (Applicant's Ex. No. 7; Tr. pp. 61-62)

19. Applicant's program enables the disabled students to gain independence because of

increased muscle development, coordination, and verbal communication skills. (Tr. pp. 73-82)

20. For a student to be able to ride, a recommendation from an M.D. must be obtained. The student must also fill out applicant's liability releases and emergency medical forms. The applicant requires that its instructors make notes after each class to document the progress of the students. (Tr. pp. 64-65)

21. Initially, the applicant charged no fees whatsoever for their program. In 1991, applicant began charging a fee to cover the costs of the instructor who had been working gratis and the physical therapist who had also been donating her time. Applicant's riding fee in 1995 was \$4.00 per hour. (Tr. p. 18, 25)

22. Since the inception of applicant's program, no one has ever been turned away from the program for the lack of the ability to pay. The applicant had no formal scholarship program nor was the fact that a waiver of fees was available written into the by-law provisions prior to 1996. It was understood that applicant was created to serve people and not to collect money. (Tr. pp. 18, 24)

23. Applicant's student population contains pupils with all types of disabilities, both mental and physical. There is no disability which would exclude a student from riding with the exception of uncontrolled seizures. The applicant has a 350 pound student weight limit that has never been challenged. (Tr. pp. 27-28)

24. A new student is assigned to a class with four other students. A registered North American Riding for the Handicapped Association (hereinafter referred to as N.A.R.H.A.) instructor teaches the hour-long class. The classes are broken into eight-week sessions with a three-week break in between. Each new student requires three volunteers, one on each side of the horse, and one to lead the horse. (Tr. pp. 66-71)

25. Also affiliated with the applicant are at-risk young men and women from a youth residence program in Rockford, Illinois, called the Mill. The program provided the applicant with a group of ten at-risk youths a day. Those youth would be the applicant's group leaders. The at-risk youth learned to lead the horses and side-walk with the disabled students.

Applicant's program enabled the at-risk youths to work directly with the horses and persons with the disabilities. The at-risk youths developed a realization of how lucky they were to have functioning body parts and brain. (Tr. pp. 28-29, 68)

26. Including the youths from the Mill, the applicant had approximately 150 volunteers involved with the program in 1995. (Tr. p. 72)

27. The applicant approached the Rockford schools to see if there was a need for applicant's program for any special group of students. The school suggested that the applicant work with severely mentally-impaired students from the special education program. The school system needed a program to develop skills for students who were nearing age 21 and graduation. The students needed skills that they could use in the community after graduation to earn a living. Six of those students are used at applicant's facility learning to maintain the stables and care for the horses and horses' facilities. (Tr. pp. 29-30)

28. Initially, the special education school students could not distinguish between manure and bedding material for the horses. By June, every one of the students could come individually to the farm by bus, put on their own boots and special coats, find the manure forks and buckets, and independently start in the first barn and clean the stall by themselves. One of the students graduated from high school and is currently a permanent employee of the applicant. That student works 30 hours a week. (Tr. pp. 29-31)

29. The applicant is exempt from payment of federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code. The exemption was granted by the Internal Revenue Service in July 1984. (Dept. Ex. No. 4 p. 57)

30. For the fiscal year ending December 31, 1995, applicant's total support and revenue was \$48,605.00. The sources of income were: contributions - \$35,909.00; fees - \$3,227.00; member dues - \$235.00; aluminum sales - \$1,651.00; fund raising - \$1026.00; boarders - \$1956.00; interest - \$1,886.00, and miscellaneous - \$2,715.00. For the same time period, the applicant had expenses of \$28,409.00. (Applicant's Ex. No. 4; tr. pp. 31-34)

31. Regarding the aluminum sales, the applicant collects aluminum cans and trades

them in at the local recycling plant. In conjunction with this program, the applicant has also “cajoled the Bayre Foundation to match the money from their aluminum section.” The applicant receives between \$.80 and \$.90 a pound for the aluminum. (Tr. p. 32)

32. The purchase of the subject property was made possible by the issuance of \$300,000.00 worth of tax exempt bonds, the proposal for which had to be approved by the Illinois Development Finance Authority. (Applicant’s Ex. No. 5; Tr. pp. 37 - 43)

33. Immediately after the purchase of the property, and in fact prior to the purchase, applicant began using the facility to train students and horses for the upcoming Special Olympic program in Springfield. The first class commenced six weeks after the purchase of the property. (Tr. pp. 44-47)

34. The applicant acquired two horses with the purchase of the property. Subsequently it has procured 17 additional horses. The applicant has never had to purchase a horse for the program. (Tr. p. 45-46)

35. A ribbon cutting ceremony was held on the property in September 1995 at the close of the summer session. (Tr. pp. 46-47; Applicant’s Ex. No. 6)

36. The applicant is affiliated with the N.A.R.H.A., which provides the insurance, certifications, and accreditation of the applicant. (Applicant’s Ex. No. 8; Tr. pp. 46-47, 68-69)

37. On the subject property, the applicant boards a number of horses. Five of the boarded horses belong to Sally Goddard, a volunteer and substantial contributor to the program. Ms. Goddard paid \$160.00 per month in 1995 to board the horses. For the board, the horses are fed, turned out, blanketed, and used in the applicant’s program. Two other horses are also boarded on the subject parcel for \$50.00 per month. The applicant uses those horses in its program as well. (Tr. pp. 49-50)

38. The applicant has been extremely successful in receiving grants from individuals, corporations, and foundations for various needs in conjunction with the subject properties. The grants provided infrared heaters for the buildings, an alarm system to detect fires and burglars in the barns, fencing for the property, and Gortex waterproof breathable blankets for the horses.

The Army Combat Engineers wished to do some training for charities and helped the applicant with the fencing of the property. (Tr. pp. 51-53, 58)

39. On the parcel that contains 13.39 acres the applicant raises grass and hay. The applicant has constructed two 300 by 300 square foot paddocks on the parcel. The horses are turned out to roam and feed in the paddocks. The applicant hays the rest of the parcel for a portion of the feed needed for the horses. (Tr. pp. 54-55)

40. One of the buildings on the five-acre portion of parcel contains the three-bedroom house for the caretaker of the parcel. In 1995, the caretaker helped with the barns, fed and watered the horses, turned them out, cleaned the stalls, and was on the property at night and on weekends to ensure that no horse was allowed to be loose. The caretaker paid no rent and the applicant did not pay the caretaker for the work performed. The same arrangement continues. (Tr. pp. 55-56)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;. . .

(c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

Here, the appropriate exemption applies to property owned by a charitable organization and used for charitable purposes. Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). The courts have also ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893) which states:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1)they have no capital stock or shareholders;
- 2)they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3)they dispense charity to all who need and apply for it;
- 4)they do not provide gain or profit in a private sense to any person connected with it; and,
- 5)they do not appear to place obstacles of any character in the way

of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home, at 157.

The applicant herein, I find by virtue of the section 501(c)(3) designation by the Internal Revenue Service, does not have capital stock or shareholders. The applicant has proven that they do not provide gain or profit in a private sense to any person connected with the organization. While the applicant did not have a provision for a waiver of fees in their by-laws in 1995, I find that it was the policy of the applicant to waive fees at any time that a pupil or student was unable to pay. I also find that the applicant derived its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in their articles of incorporation. I also find that the applicant dispenses charity to all who need and apply for it. As a matter of fact, the applicant actively recruits persons that they feel might benefit from the therapeutic riding experience. The applicant certainly does not place any obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses.

I therefore find that the applicant is a charitable organization and that the use of the majority of the parcels at issue is for the applicant's programs. In particular, the wooden lean-to, the pole barn, the Butler building and the Butler stable on the 4.58 acre parcel qualify for exemption for the portion of the 1995 assessment year that the applicant owned the property.

In Grand Lodge v. Board of Review, 28 Ill. 480 (1917), the Supreme court found that a 464 acre parcel of land farmed, controlled and managed by a charitable organization in connection with the operation of a home owned and operated by the organization qualified for exemption. I therefore also find that the 13.39 acre parcel known as the farmland, which is owned by the applicant and used in conjunction with their charitable activities on this parcel, also qualifies for a property tax exemption for the portion of the 1995 assessment year that the

applicant owned the property.

In order for a residence for a caretaker of property that otherwise qualifies for exemption from real estate taxation to be found exempt, it must be shown that the caretaker is required to live on the grounds and that there is a performance of exempt duties at the residence. Girl Scouts of Du Page County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988); Lutheran Child and Family Services v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987). The caretaker's residence at issue housed persons who were responsible for the care of the horses on weekends and in the evenings. Those duties did not take place at the residence itself. No evidence was shown that the residence was used for other purposes than as a place for the caretaker to live. I therefore find that the residence of the caretaker for the subject parcel does not qualify for exemption.

Based on the foregoing law and facts, I recommend that a portion of Boone County Parcel Index Nos. 09-03-14-400-006 AND 09-03-14-400-020 be exempt from property taxation from the time that the applicant acquired them, August 28, 1995 through December 31, 1995. I recommend that the building where the caretaker lives and the corresponding ground beneath, which is comprised of 1,736 square feet, remain on the tax rolls for 1995 and be assessed to the applicant for the portion of time that the applicant owned it. I therefore find that the applicant qualifies for a property tax exemption for 99.98% of the parcels at issue for 34% of the 1995 assessment year, the portion of the year that the applicant owned the properties.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
July 21, 1998